IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10520 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANDHI BROTHERS

Versus

ACCOUNTS OFFICER (TR)

Appearance:

MR VIJAY H PATEL for the Petitioner.

MR KETAN A DAVE for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/01/2003

ORAL JUDGEMENT

This petition has been filed seeking to restrain the respondents from disconnecting telephone nos. 2377 and 23190 at Unjha. It is stated that the aforesaid telephone nos. are installed at the residence

of the petitioner in his name i.e. Pranvallabhdas Champaklal Gandhi. A letter dated 29.9.1993 was sent to the petitioner intimating that the telephones aforesaid in the name of M/s. Mukesh Brothers at Bayad and whose proprietor is Umeshbhai P. Gandhi who happens to be the son of the petitioner. An amount of Rs. 19562/- was due because of non-payment of bills of the aforesaid telephone nos. if that amount is not deposited within time, telephones would be disconnected with effect from 16.10.1993. A demand note dated 30th September, 1993 for Rs. 19562/- was also issued. It is stated that the telephones which were in the name of Pranvallabhdas Champaklal Gandhi cannot be disconnected by any of the respondent authorities as those telephones are in the name of the firm M/s. Mukesh Brothers. Umesh Gandhi who is the owner of the petitioner is the proprietor of that firm. He has no relation with his son or his son's firm. His son Umeshbhai has not paid large amount due and hence various complaints have been filed against him and other members of the family. The petitioner was not at all responsible and liable for any of the acts done by his son. In the beginning, some of the family members of the petitioner were partners in the firm M/s. Mukesh Brothers, but that firm has been dissolved by a deed dated 31st March, 1991. All the partners except Umeshbhai have retired and thereafter his son Umeshbhai has become the proprietor of the firm. His son Umesh had also intimated the sales tax authorities to make necessary changes on the basis of the said deed of dissolution of the firm in the relevant sales tax record and necessary correction has already been carried out as communicated by the letter dated 21st August, 1991. The petitioner and other family members have given a public notice dated 30th July, 1993 in the "Sandesh" daily newspaper in order to show that either the petitioner or his family members have no connection either with his son, his wife or his firm M/s. Mukesh Brothers. As such, the respondent authorities again issued a letter directing the respondent no. 3 to disconnect the petitioner's telephone connection. Direction to the respondent no. 3 to disconnect the petitioner's telephone nos. 2377 and 3190 is illegal, arbitrary, discriminatory, unjust, unjustified, void and against principles of natural justice.

2. Affidavit-in-reply has been filed in this case by the Accounts Officer wherein it is stated that telephone no.2308 was installed in the name of M/s.Mukesh Brothers. The said subscriber has not paid telephone bills. Hence, M/s. Mukesh Brothers was in arrears of Rs. 19,562/-. The said telephone was disconnected for

non-payment of the aforesaid two telephone bills. His telephone account was permanently settled and the said subscriber was given refund of the security deposit and as a result, M/s. Mukesh Brothers is in arrears of Rs. 19272/-. It is further stated that at the time of installation of telephone at Bayad, the following persons were the partners of the firm M/s. Mukesh Brothers.
(1) Gandhi Umeshkumar Pranjivandas
(2) Gandhi Padmaben Pranjivandas
(3) Gandhi Minaben Kirankumar and
(4) Gandhi Ketankumar Pranjivandas.

Umeshkumar and Ketankumar are the petitioner's sons and Padmaben his wife. All the aforesaid partners are close relatives of the petitioner and they are related to each other. The firm M/s. Mukesh Brothers is a firm being run and managed by the family of the petitioner. The department has never been informed about the change in the partnership in this connection. A public notice was issued by the petitioner in the daily newspaper "Sandesh" dated 25th July, 1993 after issuance of the telephone bill dated 11.9.1993 and 11.4.93 in order to avoid the payment of legitimate dues of the telephone department. The petitioner cannot be permitted to take advantage of such technical plea ignoring the reality that M/s. Mukesh Brothers is a firm run and managed by the petitioners. If the telephone bills in respect of a firm's telephone are not paid, the department is entitled to disconnect the phone rented to a partner in his individual capacity. All the partners constituting such firms are the owners of the telephone and subscribers and each of them has a right and liability of a subscriber. In the notice, it is clearly mentioned that if the outstanding dues are not made clear on or before 16.10.1993, the telephones above-noted working in the name of Pranjivandas Gandhi at his office and residence in Unjha would be disconnected. The petitioner has failed to make out any case to invoke extraordinary jurisdiction of this Court. Hence, the petition deserves to be dismissed.

3. I have carefully considered the assertions made in the petition as well as in the affidavit-in-reply. It appears that the telephones were installed in the name of the firm. That firm was subsequently dissolved and the petitioner's son was the owner of that firm. The bills of telephones were not paid by the subscriber of the telephones. Hence, a notice for disconnection due to non-deposit of the rental amount, outstanding amount of rent was issued to the petitioner. If the telephone is being sed by the

petitioner and though it was in the name of the firm and if the outstanding amount of the rent has not been paid, the department is fully justified to disconnect the same. As it appears in the present case, after issuance of the notice for outstanding amount, the petitioner published a public notice in the daily newspaper "Sandesh" in order to avoid responsibility of the payment. If the petitioner wants to retain the telephone, it is the duty of the petitioner to deposit the outstanding amount of the telephone department. But when the outstanding amount is not deposited, the telephone cannot be retained by one person or the other. In the facts and circumstances, the notice issued by the department for disconnection if the amount is not deposited within the time limit prescribed in the notice is fully justified. As such, I do not find any good ground to exercise extraordinary jurisdiction under Article 226 of the Constitution of India.

4. In view of the above, this petition has no merit and it deserves to be dismissed. Accordingly, the petition is dismissed. Rule discharged with no order as to costs. Interim relief, if any, stands vacated.

...

***darji